

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
December 19 through December 25, 2008

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

GOMEZ, MATTER OF v STOUT:

2ND Dept. App. Div. judgment of 5/27/08; leave to appeal granted by Court of Appeals, 12/17/08;

ADMINISTRATIVE LAW - ADMINISTRATIVE REVIEW - WHETHER THE COMMISSIONER OF THE WESTCHESTER COUNTY DEPARTMENT OF PARKS, RECREATION AND CONSERVATION COULD PROPERLY APPOINT COUNTY PUBLIC WORKS COMMISSIONER TO REVIEW A HEARING OFFICER'S RECOMMENDATION REGARDING THE EMPLOYMENT OF AN EMPLOYEE OF THE COUNTY DEPARTMENT OF PARKS, RECREATION AND CONSERVATION;

App. Div. granted a CPLR article 78 petition; annulled a determination of the Commissioner of the Westchester County Department of Parks, Recreation and Conservation which, upon a decision of the Commissioner of the Westchester County Department of Public Works, as designated agent, adopted the recommendation of a hearing officer, made after a hearing, finding the petitioner guilty of misconduct and incompetence, terminated petitioner's employment as Assistant Games Manager, Grade VII; and remitted to respondent for the appointment of a duly-qualified individual authorized to review the recommendation of the hearing officer.

IRVINE, MATTER OF v ROGERS, et al.:

3RD Dept. App. Div. order of 11/21/08; dismissal of proceeding; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - CHALLENGE TO APPELLATE DIVISION ORDER GRANTING MOTION TO DISMISS A CPLR ARTICLE 78 PROCEEDING IN THE NATURE OF PROHIBITION WHEREIN PETITIONER CLAIMED HE WAS IMMUNE FROM FURTHER PROSECUTION ON UNDERLYING CRIMINAL CHARGES; App. Div. granted a cross motion to dismiss a CPLR article 78 proceeding in the nature of prohibition and denied a motion for a stay as academic.

KADARKO (JAMES), PEOPLE v:

1ST Dept. App. Div. order of 10/9/08; reversal; leave to appeal granted by McGuire, J., 12/9/08; CRIMES AND CRIMINAL PROCEDURE - JURY DELIBERATIONS - NOTICE TO COUNSEL OF SUBSTANTIVE INQUIRY FROM JURY - WHETHER TRIAL COURT'S FAILURE TO READ SECOND JURY NOTE TO COUNSEL VERBATIM BEFORE DELIVERING A SECOND ALLEN CHARGE CONSTITUTED REVERSIBLE ERROR; Supreme Court, Bronx County convicted defendant, after a jury trial, of robbery in the first degree and imposed sentence; App. Div. reversed and remanded for a new trial.

MARON, et. al., MATTER OF v SILVER, et al.:

3RD Dept. App. Div. order of 11/13/08; modification; sua sponte examination whether jurisdiction exists to support the appeal taken as of right; CONSTITUTIONAL LAW - LEGISLATIVE INACTION IN FUNDING JUDICIAL SALARY INCREASES - COMPENSATION CLAUSE (NY CONSTITUTION ARTICLE VI § 25[a]) - EQUAL PROTECTION OF THE LAWS - SEPARATION OF POWERS DOCTRINE - AVAILABILITY OF MANDAMUS TO COMPEL - ALLEGED PROCEDURAL ERRORS; Supreme Court, Albany County partially granted certain respondents' motion to dismiss the petition; App. Div. modified by reversing so much of the judgment as partially denied respondents' motion to dismiss the petition, granted the motion in its entirety, and dismissed the petition.

